

405 KAR 3:050. Permit requirements.

RELATES TO: KRS 350.151

STATUTORY AUTHORITY: KRS 350.151

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.151 requires the Environmental and Public Protection Cabinet to adopt rules and administrative regulations for the surface effects of underground coal mining. This administrative regulation sets forth procedures and requirements related to permits.

Section 1. Permit Required. (1) No person shall engage in surface operations of underground coal mining without having first obtained a permit from the cabinet.

(2) The permit shall authorize the permittee to engage in surface operations of underground coal mining upon the area described in his application for a period of five (5) years from the date of issuance.

(3) The permit shall authorize surface operations of underground coal mining during a time period for which the permittee has posted appropriate bond coverage.

(4) The permit shall confer upon the permittee a qualified right to conduct surface operations of underground coal mining, but shall not relieve the permittee of responsibility to comply with all applicable federal, state and local laws and regulations.

Section 2. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information including, but not limited to, a U. S. Geological Survey seven and one-half (7 1/2) minute topographic map marked to show the approximate boundaries of the area of land to be affected or locations of mine openings, access roads, haul roads, disposal areas for excess earth and rock materials, waste disposal areas, sedimentation ponds, other processing areas, stockpile areas, loading areas, facilities for the washing or other preparation of coal. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within thirty (30) days after filing an on-site investigation of the area with the person or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 3. Publication of Notice of Intention to Mine. (1) A prospective applicant for a permit, except for existing underground mining operations, shall publish at least once a public notice of his intention to file an application for that permit. Such publication shall be made by advertisement in a newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed mining site is located.

(2) The publication shall be made within thirty (30) days prior to the filing of the permit application with the cabinet.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Mine" and shall be in a manner and form prescribed by the cabinet and shall include, though not be limited to, the following:

(a) The name and address of the applicant;

(b) The permit application number;

(c) The location of the proposed mining site;

(d) A brief description of the mining activity proposed, together with a statement of the amount of acreage to be affected by the proposed surface operations.

(4) The applicant for a permit shall establish the date and place at which the "Notice of Intention to Mine" was published by attaching to his application an affidavit from the publishing newspaper

certifying the time, place and content of the published notice.

Section 4. Permit Application. (1) A person desiring a permit shall submit an application of form and content as prescribed by the cabinet. The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet, with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the cabinet may require pursuant to this section.

(2) The application shall include the information described in this subsection through subsection (13) of this section, except that existing underground mining operations not engaging in new surface operations shall comply with only subsections (1), (2)(a) through (g), (3), (4) except for paragraph (c), (14) and (15) of this section.

(a) The location and area of land to be affected by the operation, with a description of access to the site from the nearest public highway;

(b) The owner or owners of the surface of the area of land to be affected by the proposed operations and the owner or owners of all surface area within 500 feet or any part of the area to be affected;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine coal on the land to be affected;

(e) The permanent and temporary post office addresses of the applicant;

(f) Whether or not the applicant or any person associated with the applicant as specified in subsection (2)(g) of this section holds or has held any other permits under KRS Chapter 350, and an identification of such permits;

(g) Whether or not the applicant is in compliance with KRS 350.130(3) regarding past suspensions or revocations of permits, forfeitures of bond, or repeated noncompliance or violation, and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten (10) percent or more of any class of stock of the applicant, is subject to any of the provisions of KRS 350.130(3) and he shall so certify;

(h) A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 3 of this administrative regulation.

(3) Maps. The application shall include or be accompanied by such number of copies as the cabinet may determine, not to exceed five (5), of a United States Geological Survey seven and one-half (7 1/2) minute topographic map or other such map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include or be accompanied by such number of copies as the cabinet may determine, not to exceed five (5), of an enlarged United States Geological Survey seven and one-half (7 1/2) minute topographic map or other such map acceptable to the cabinet meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the applicable mining laws of this state." The certification shall be signed and notarized. The cabinet may reject any map as incomplete if its accuracy is not so attested.

(b) Identify the area of land to be affected to correspond with the application.

(c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the area to be affected and within 500 feet of any part of the area to be affected.

(d) Be of a scale between 400 feet to the inch and 660 feet to the inch.

(e) Show the names and locations of all streams or other bodies of public water; wild rivers as established pursuant to KRS Chapter 146; local, state, interstate, national or other public parks; roads, schools, communities, public buildings or other public property; churches or cemeteries; commercial or institutional buildings; oil and gas wells, oil and gas lines, water and sewer lines, power and telephone lines; and dwelling houses or other residences, within 500 feet of the area of land to be affected.

(f) Show by appropriate markings the boundaries of the area of land to be affected, the total number of acres of land to be affected, and the proposed locations of roads, entries to underground works, excavations, disposal areas for rock and earth materials, disposal areas for waste materials including refuse piles and slurry ponds, sedimentation ponds, other impoundments, topsoil storage areas, stockpiles, areas and facilities for washing, crushing or other processing of coal, loading and shipping areas, repair areas, storage areas for equipment and materials, and other significant facilities incident to surface operations of underground coal mining.

(g) Show the date on which the map was prepared, the north point and the quadrangle name.

(h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Transportation plan. The application shall include or be accompanied by a transportation plan and map of such scale and detail as the individual county maps published by the Kentucky Transportation Cabinet which shall set forth the portions of the county and state public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining operation.

(a) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(c) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

(6) Topsoil handling plan. The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 3:080 with regard to topsoil handling.

(7) Backfilling and grading plan. The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 3:100 with regard to backfilling and grading.

(8) Plan for disposal of excess rock and earth materials. The application shall include or be accompanied by a plan for the disposal of rock and earth materials. In excess of that required to meet the backfilling and grading requirements of 405 KAR 3:100 which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 3:110 with regard to disposal of excess rock and earth materials.

(9) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming or toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the cabinet that the operation will comply with the requirements of 405 KAR 3:120 with regard to waste materials and acid and toxic materials.

(10) Surface water control and monitoring plan. The application shall contain or be accompanied by a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of:

(a) 405 KAR 3:130 with regard to protection of the hydrologic system;

- (b) 405 KAR 3:140 with regard to water quality standards and surface water monitoring;
- (c) 405 KAR 3:170 with regard to sediment control measures; and
- (d) 405 KAR 3:160 with regard to diversions of surface flows.

(11) Groundwater control and monitoring plan. The application shall include or be accompanied by a plan for the control and monitoring of groundwater, which shall demonstrate to the satisfaction of the cabinet that the operation will comply with the requirements of:

- (a) 405 KAR 3:130 with regard to protection of the hydrologic system;
- (b) 405 KAR 3:150 with regard to groundwater; and
- (c) 405 KAR 3:160 with regard to diversion of underground flows.

(12) Revegetation plan. The application shall include or be accompanied by a revegetation plan which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 3:080 with regard to revegetation.

(13) In the required operational plans specified in subsections (5) through (12) of this section and in the other requirements of this section, the cabinet may require all such supporting documentation as the cabinet may deem necessary to insure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(14) Fees. The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of \$250 plus fifty (50) dollars for each acre or fraction thereof of the area of land to be affected by surface operations. No permit application shall be processed unless such fees have been paid.

(15) Bonds.

(a) The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky, with surety satisfactory to the cabinet, in the penal sum to be determined by the cabinet on the recommendation of the secretary, of not less than \$500 nor more than \$3,000 for each acre or fraction thereof of the area of land to be affected, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in KRS Chapter 350 and of the rules and administrative regulations promulgated pursuant thereto in this chapter. The cabinet shall accept, in lieu of the surety provided herein, the deposit by the applicant of United States government securities, cash, or its equivalent in a sum equal to the principal amount of the required bond.

(b) In determining the amount of bond within the limits in paragraph (a) of this subsection, the cabinet shall take into consideration the character and nature of the overburden and the cost of backfilling, grading, and reclamation to be required as provided in this chapter.

(c) In a particular instance where the circumstances are such as to warrant an exception, the cabinet may in its discretion reduce the amount of the bond for a particular operation to less than the minimum required in paragraph (a) of this subsection.

Section 5. Procedures for Processing of Application. (1) Complete, but separate and distinct copies of the application, not to exceed five (5) in number as the cabinet may determine, shall be submitted to the cabinet at the location and address prescribed by the cabinet. The cabinet shall provide written acknowledgment of receipt of the application.

(2) Within thirty (30) working days the cabinet shall either:

- (a) Issue a permit to the applicant or deny the application; or
- (b) Notify the applicant in writing by certified mail, return receipt requested, or registered mail, of any deficiencies in the application and allow the application to be temporarily withdrawn;
- (c) Temporary withdrawal periods shall not be considered in computation of the thirty (30) working days.

(3) If the cabinet denies an application it shall set forth in writing the reasons for the denial.

Section 6. Deletion of Areas and Denial of Permit. (1) The cabinet shall delete from a permit areas proposed to be affected by surface operations of underground coal mining, or shall deny a permit when necessary to insure compliance with the provisions of this section.

(2) No application for a permit and no operation shall be approved or allowed by the cabinet if there is found on the basis of the information set forth in the application, or based on other relevant information available to the cabinet, that the requirements of KRS Chapter 350 and this chapter will not be observed, or that there is not probable cause to believe that the proposed surface operations, backfilling, grading or reclamation or the area to be affected can be carried out consistent with the purpose of KRS Chapter 350.

(3) If the cabinet finds, based upon experience with similar operations upon lands of similar physical and chemical characteristics, that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the cabinet may delete from the application lands with such physical and chemical characteristics.

(4) Subject to valid existing rights no surface operations of underground coal mining except those which existed on or before August 4, 1977, shall be permitted to be within 300 feet from any occupied dwelling unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building or public park, or within 100 feet of a cemetery.

(5) The cabinet shall not issue a permit if it finds that the operation will constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream lake or other public property. The cabinet shall delete such areas from the permit application or operation.

(6) The cabinet shall not give approval to conduct surface operations of underground coal mining upon any area which is within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line, provided however that the cabinet may permit such public roads to be relocated, or may permit the area affected to lie within 100 feet of such public road, if after public notice and opportunity for public hearing in the locality a written finding is made by the cabinet that the interests of the public and the land owner affected thereby will be protected.

(7) The cabinet shall not approve the application for a permit where the surface operations of underground coal mining will adversely affect a wild river established pursuant to KRS Chapter 146, or a state, national or interstate park unless adequate screening and other measures as approved by the cabinet are incorporated into the permit application.

(8) The cabinet shall not issue a permit to conduct surface operations of underground coal mining upon an area unless it finds that adequate measures have been or will be undertaken to eliminate damages to members of the public, their real and personal property, public roads, streams, and all other public property, from soil erosion, rolling or sliding stones and earth materials, water pollution, and hazards dangerous to life and property.

(9) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface operations of underground coal mining and reclamation operations unless the cabinet specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 3:070 regarding signs and markers.

(10) Denial of permit for past violations.

(a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of KRS Chapter 350 in respect to all permits issued him.

(b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without

cost to the state, or the operator or person has paid such sum as the cabinet finds is adequate to reclaim such lands.

(c) The cabinet shall not issue any additional permits to, or allow future operations by, any operator or person who has repeatedly been in noncompliance with or violation of KRS Chapter 350, or who has had permits revoked or operations terminated on more than three (3) occasions.

Section 7. Increase or Decrease of Area Under Permit. Upon application by the permittee, the cabinet may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(1) Increase of area under permit.

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under Sections 2, 3, and 4 of this administrative regulation.

(b) Fees. The permittee shall pay in the manner prescribed in Section 4(14) of this administrative regulation, a basic fee of \$250 plus a fee of fifty (50) dollars for each acre or fraction of acre of increased area requested.

(c) The permittee shall file with the cabinet a supplemental bond in the amount to be determined as provided in Section 4(18) of this administrative regulation, for each acre or fraction of an acre of the increased area approved.

(d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.

(2) Decrease of area under permit.

(a) Application. The permittee shall file an application upon forms provided by the cabinet, with such documentation as the cabinet may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.

(b) Release of bond. If the cabinet approves the decrease in permitted area it shall release the bond for each acre of the decrease, but in no case shall the bond be reduced below \$5,000 except as provided in Section 4(18)(c) of this administrative regulation.

(c) Acreage fees transferred. If the cabinet approves the decrease in acreage under permit the fees for each acre decreased shall be returned to the permittee, or shall upon request of the permittee be transferred and credited to acreage fees in subsequent applications by the permittee.

Section 8. Renewal of Valid Existing Permit. (1) Any valid permit issued pursuant to KRS Chapter 350 shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit. Any permit renewal shall be for a term not to exceed the period of the original permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications pursuant to KRS Chapter 350, and a new and original application shall be required for such areas.

(3) Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued, and the public notice requirements of this chapter shall not apply, provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form, manner and content as prescribed by the cabinet.

(b) The permittee shall submit, in the manner prescribed by the cabinet, all revised or updated information required by the cabinet. Such information shall include, but not be limited to, an updated

operational plan current to the date of request for renewal, showing the status and extent of all surface operations and reclamation operations on the existing permit.

(c) The terms and conditions of the existing permit are being satisfactorily met.

(d) The present surface operations and reclamation operations are in compliance with the environmental protection standards of this chapter as set forth in 405 KAR 3:070 through 405 KAR 3:190.

(e) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the cabinet might require.

(4) Prior to approval of any permit renewal the cabinet shall provide notice to the appropriate public authorities.

Section 9. Succession of One (1) Operator by Another. (1) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the cabinet may release the first operator from all liability under this chapter for that particular operation provided the requirements of paragraphs (a) and (b) of this subsection are met:

(a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter; and

(b) The successor operator shall assume as part of his obligation under this chapter, all liability for the reclamation of land areas affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface operations and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Section 10. Strip Mining Operations on Areas of Surface Operations of Underground Coal Mining. If approved by the cabinet, a permittee may conduct strip mining operations on areas of land covered by a valid permit for surface operations of underground coal mining, provided that a permit is obtained from the cabinet and such strip mining operations are conducted in accordance with procedures and environmental protection performance standards as contained in KRS Chapter 350 and administrative regulations adopted pursuant thereto regarding strip mining operations.

(1) Application for approval. In applying to the cabinet for such permit the applicant shall apply for a permit as required by KRS Chapter 350 and administrative regulations adopted pursuant thereto for strip mining operations. The applicant shall also file a revised copy of the map of the area on which the valid permit for surface operations was based, on which he shall designate the proposed strip mining operations and other parts of the area necessary to the conduct of strip mining operations.

(2) Deferral of reclamation. Subject to compliance with the water quality standards of 405 KAR 3:140, and subject to the requirements of KRS Chapter 350 and administrative regulations adopted pursuant thereto regarding strip mining operations, the cabinet may authorize the permittee to defer the reclamation of the area disturbed by strip mining operations if necessary to the conduct of surface operations of underground coal mining.

(3) Bond to remain in effect. The bond covering such area shall remain in effect until reclamation of such area has been completed by the permittee as required by the provisions of KRS Chapter 350 and administrative regulations adopted pursuant thereto.

Section 11. Release of Bond. (1) When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this chapter, and the soil pH level as required by the cabinet has been established, the permittee may submit to the cabinet a report and request for partial release of bond for the area. The report shall state the number of acres and type of area

affected for which the partial bond release is requested and shall contain appropriate maps, cross-sections, and other engineering and technical documentation as the cabinet may require to demonstrate to the satisfaction of the cabinet that the requirements of this chapter have been met with regard to backfilling and grading and that the required soil pH level has been established.

(2) Upon verification of the report and request, the cabinet shall release to the permittee the bond which was posted for that area in its full amount less \$300 per acre.

(3) After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report and request for release of the remaining bond of \$300 per acre. The report shall demonstrate to the satisfaction of the cabinet that the requirements of this chapter have been met with regard to revegetation, and that surface drainage from the area meets the water quality standards of this chapter prior to any treatment of the drainage.

(4) After verification of the request and report of vegetation and water quality, the cabinet shall release to the permittee the remaining bond in the full amount of \$300 per acre.

(5) Transfer of liability. A person or organization, having qualifications acceptable to the cabinet, may post bond or a cash deposit in a sum determined by the cabinet and assume the liability for carrying out the reclamation plan approved by the cabinet in areas where the mining operation and any necessary backfilling and grading have been completed. The cabinet shall then release the bond posted by the permittee for such area. (4 Ky.R. 408; eff. 5-3-78; Am. 510; 5 Ky.R. 220; eff. 9-6-78; TAm eff. 8-9-2007.)